

REMARKS

The last Office Action has been carefully considered.

It is noted that claims 21, 23, 24, 25, 26, 28, 30, 31, 35, 38 and 39 are rejected under 35 U.S.C. 102(e) over the patent to Egner-Walter.

Claims 29 and 33 are rejected under 35 U.S.C. 103(a) over the patent to Egner-Walter in view of the German patent to Merkel.

In view of the Examiner's formal rejections to the claims, the corresponding claims have been amended in formal aspects as required by the Examiner, and therefore it is believed that these objections should be considered as no longer tenable and should be withdrawn.

After carefully considering the Examiner's grounds for the rejection of the claims, applicants have amended claim 21 to more clearly define the present invention and to distinguish it from the prior art.

It should be advisable before the analysis of the prior art, to explain to the Examiner the new features of the present invention which is now defined in claim 21.

Claim 21 defines a wiper blade in which the legs 44, 46, of the wind deflection strip 42 extend from an upper narrowest point of the base 48 downwardly to the upper band surface 11 of the support element in contact with the upper band surface 11. With this construction the upper band surface 11 of the support element 30 positively supports the wind deflection strip.

Turning now to the references and particular to the patent document GB 318 which the Examiner indicated as a very pertinent document, it can be seen that here the legs of the wiper strip do not extend from an upper narrowest point of the base downwardly to and in contact with an upper band surface of the support element. Instead, the legs of the wind deflection strip in this reference extend laterally of the upper band surface and the side band surface and then under the lower band surface of the support element 8, 10, they are not in contact with the upper band surface of the support element and they are not supported on the upper surface of the band support element.

In the patent document to Egner-Walter, the legs of the wind deflection strip do not form actually an angular hollow space therebetween which extends from an upper narrowest point of the base downwardly, but instead the hollow space is a stepped horizontal space between a lower

surface of an upper part of the wind deflection strip and an upper surface of the support element, wherein the attack surface is not located on the leg above the support element, but is provided on an additional element which is in one piece with the remaining portion of the wind deflection strip and extends under the support element.

Thus, this reference also does not teach the new features of the present invention as defined in claim 21.

German patent document 368 discloses a wiper blade in which the wind deflection strip does not have two legs forming an angular space therebetween and so that the legs spaced apart from one another extend from an upper point of the connecting base to the upper surface of the support element. This reference also does not teach the new features of the present invention as defined in claim 21.

The original claims were rejected over the Egner-Walter publication under 35 U.S.C. 102 as being anticipated. In connection with this, it is believed to be advisable to cite the decision in *re Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984) in which it was stated:

"Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim."

Definitely, this reference does not disclose each and every element of the invention which is now defined in the amended claim 21. Therefore it is believed that anticipation rejection should be considered as no longer tenable and should be withdrawn.

As for the obviousness rejection applied by the Examiner over the combination of the references, it is respectfully submitted that in order to arrive at the applicant's invention from the teaching of the references, it is not sufficient to use only the constructions disclosed in the references, but instead they have to be fundamentally modified, in particular by introducing into the devices disclosed in the references the new features of the present invention which are now defined in the amended claim 21.

However, it is known that in order to arrive at a claimed invention, by modifying the references the cited art must itself contain a suggestion for such a modification.

This principle has been consistently upheld by the U.S. Court of Customs and Patent Appeals which, for example, held in its decision in re Randol and Redford (165 USPQ 586) that

Prior patents are references only for what they clearly disclose or suggest; it is not a proper use of a patent as a reference to modify its structure to one which prior art references do not suggest.

Definitely, the references do not have any hint or suggestion for such modifications.

In view of the above presented remarks and amendments, it is believed that claim 21 should also be considered as patentably distinguishing over the art and should also be allowed.

As for the dependent claims which depend on claim 21, they share its presumably allowable features, and therefore they should be allowed as well.

Reconsideration and allowance of the present application is most respectfully requested.

Should the Examiner require or consider it advisable that the specification, claims and/or drawings be further amended or corrected in

formal respects in order to place this case in condition for final allowance, then it is respectfully requested that such amendments or corrections be carried out by Examiner's Amendment, and the case be passed to issue. Alternatively, should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned (at 631-549-4700).

Respectfully submitted,



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